

MID-AMERICA LOCOMOTIVE & CAR REPAIR, INCORPORATED

1601 West Allens Lane, Evansville, Indiana 47710
AAR Reporting Marks – MALX
Phone 812 421 1760 Fax 812 421 1770

July 23, 2007

Honorable Congressman Brad Ellsworth of Indiana
101 NW Martin Luther King Jr Blvd, Room 124, Evansville, IN 47708

Honorable Senator Richard Lugar of Indiana
306 Hart Senate Office Building, Washington, DC 20510

Honorable Senator Evan Bayh of Indiana
131 Russell Senate Office Building, Washington, DC 20510

Honorable Congressman James Oberstar, Chairman House Transportation and Infrastructure Committee
2165 Rayburn House Office Building, Washington, DC 20515

Honorable Senator Richard Durbin of Illinois
309 Hart Senate Office Building, Washington, DC 20510

Honorable Senator Amy Klobuchar of Minnesota
302 Hart Senate Office Building, Washington, DC 20510

Honorable Congresswoman Julia Carson of Indiana
300 East Fall Creek Parkway N Dr #300, Indianapolis, IN 46205

Honorable Congressman Timothy Johnson of Illinois
1001 Market St , Suite 102, Mt Carmel, IL 62863

Honorable Congressman Ray LaHood of Illinois
1424 Longworth House Office Building, Washington, DC 20515

Honorable Indiana Governor Mitch Daniels
4750 N Meridian Street, Indianapolis, IN 46208



ENTERED
Office of Proceedings

JUL 30 2007

Part of
Public Record

Ref STB Finance Docket No 34608 regarding Pioneer Railcorp/Indiana Southwestern Railway misbehavior

Dear Elected Representatives,

Please listen to my story and help me find justice

I have contacted various members of Congress in the past about the excessive railroad Tariff rates which are being charged by Indiana Southwestern Railway "ISW" (a subsidiary of Pioneer Railcorp) Our company, Mid-America Locomotive and Car Repair "MALX", has encountered outrageous price increases from ISW for switching freight cars, passenger cars, cabooses and locomotives which are destined to and released from our shop in Evansville, Indiana

The ISW provides an intermediate switch of less than half a mile between CSX and our serving carrier Ohio Valley Railroad "OVR" Back in June of 2000 a Tariff was published by ISW for equipment moving to MALX This Tariff included charges to switch railcars for \$75 00 and locomotives for \$150 00 When ISW's attempted to purchase our facility, we rejected and ISW retaliated The ISW Tariff rates issued in October 2005 increased to \$250 00 for railcars and \$2,500 00 for locomotives

Letters have been sent to the STB since the year 2000 asking for their help in this matter Finally after many letters being written by Mary (Lauderdale) Knight, MALX and OVR the board directed that both parties meet at the STB Office in Washington, DC on September 27, 2005

At that time both MALX and OVR discussed the service issues which included (Tariff Rates) created by ISW (also including the failure of their common carrier obligation by disconnecting the track connection to OVR) Director Mel Clemens (STB Office of Compliance and Enforcement) oversaw this proceeding and suggested that, an attempt to resolve the matter should be made among the parties and if not that the matter would be brought back before the Board The attempt to reach resolution was in vain as ISW remained committed to blockade traffic-not by removing the track this time-but rather by maintaining tariffs which precluded traffic flow

In the Spring of 2006 the STB (Director Clemens) was contacted by OVR stating that nothing had been resolved and that the parties should be brought back before the Board MALX did not find it necessary to contact the STB since the board had already been notified by OVR

Now, after languishing at the Board without a decision since September 2005, last week I received a letter from the STB (see attached) dismissing the case and suggesting that we must go through the onerous (expensive and time consuming) process of a "Rate Case" complaint (This has been an issue all along)

What kind of treatment is this? The STB has been aware of the service issues with ISW since 2000 and yet they do nothing to effectively rein in this well documented rogue carrier who runs roughshod over shippers How do you call this fair trade and fulfilling a common carrier obligation? These ISW rates are wholly unreasonable! Could it be because we are a captive shipper-without any other competitive access-that a railroad can simply drive us out of business by the stroke of the tariff pen? MALX has only one way in and one way out and that is over the intermediate connection of ISW and we need your help to break this logjam!

MALX provides a service to Shortline railroads and shippers alike by repairing locomotives and railcars Because of the ISW excessive rates MALX cannot use the repair shop to perform its work This not only causes a direct financial hardship but also creates a barrier to the conduct of our business

I want you to consider this The STB instituted the proceeding to call the parties together (and effectively delayed the filing of a rate case) now after doing absolutely nothing to resolve the matter they dismiss the proceeding and suggest we need to file a rate case If the STB is not able to fulfill its mission as the mediating body (out of the already-in progress mediation which was initiated by the STB) then who do we go to? The answer is you as my elected Representative This situation with ISW has gone on long enough As a law abiding, job generating business and an American citizen I am tired of all of this do-nothing bureaucracy I call on you as an elected Leader to stand up and take ownership of these issues Please provide the much needed oversight of these bureaucracies and help the small business men and women of this Country We are the ones who are going to help this Country survive by providing the jobs- - but only if we are not stifled by non-competitive rates as being charged by the likes of Pioneer/ISW

I am asking for your assistance in this matter Help to allow for fair trade by re-regulating the tariffs charged by the modern day robber barons in the rail industry specifically ISW/Pioneer

I am also forwarding a copy of this letter to CURE (Consumers United for Rail Equity, 1050 Thomas Jefferson Street, NW, Washington, DC 20007) They appear to be leading the charge for Legislation which forces reasonable rail rates for businesses and consumers alike Quoting from their Chairman, former Oklahoma Congressman Glenn English' "In reality, the Surface Transportation Board is ineffective and subservient to rail interests For example, customers have to fork over \$178,200 in fees just to file a complaint with the Surface Transportation Board That's like saying you have to pay \$10,000 just to challenge a parking ticket Who's going to do that? That's right, nobody " This certainly rings true in our case

Thank you for your prompt attention to this matter

Sincerely,

Mary A (Lauderdale) Knight
Administrative Assistant to the President

cc Richard R Wilson
Ohio Valley Railroad
Metropolitan Evansville Chamber
STB Council

35888
EB

SERVICE DATE – LATE RELEASE JULY 13, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34608

**OHIO VALLEY RAILROAD COMPANY—PETITION TO RESTORE SWITCH
CONNECTION AND OTHER RELIEF**

Decided: July 13, 2007

On October 22, 2004, Ohio Valley Railroad Company (OVR) and Mid-America Locomotive & Car Repair, Inc. (Mid-America) (collectively, petitioners) filed a petition asking that two switches connecting OVR's lines with those of Indiana Southwestern Railway Co. (ISW) be restored. Petitioners also requested temporary emergency and alternative service relief under 49 CFR 1146 and 1147 and asked the Board to confirm that OVR possesses a contractual right to engage in direct interchange with CSX Transportation, Inc. (CSXT), over ISW's track. By decision served February 23, 2005, the Board ordered ISW to restore the south end switch connection with OVR but denied petitioners' other requests for relief.

On May 16, 2005, OVR and Mid-America sought to supplement their petition by alleging that ISW was engaging in unreasonable and discriminatory practices against them in violation of 49 U.S.C. 10701, 10741, and 10742. Petitioners sought various types of relief, including the prescription of an interchange agreement, proper reinstallation by ISW of the switch connection (which petitioners claimed had not been reinstalled properly), and other relief directed toward ISW's interchange pricing practices.

The Board, in a decision served on August 29, 2005, directed the parties to participate in a meeting to address the service issues, clarify the factual record, and explore the possibility of narrowing their areas of disagreement. On September 27, 2005, the parties met with the director of the Board's Office of Compliance and Enforcement (now the Office of Compliance and Consumer Assistance (OCCA)). In December 2005, OVR filed a letter stating that the parties had not yet resolved their differences.

In a decision served on February 22, 2007, the Board directed petitioners to show cause by March 14, 2007, why the proceeding should not be dismissed, and gave ISW until April 3, 2007, to file a response.

In their response, the petitioners take issue with the order to show cause. The petitioners dispute the Board's statement that the Board had not received any written communication from the parties in 13 months and that this suggested that the parties were able to address the issues raised in this proceeding without formal Board intervention. In support of their argument that the proceeding had not become dormant, the petitioners submitted two documents, both of which

are dated June 15, 2006: an email between OVR and ISW (on which the Director of OCCA was copied) and an email from OVR to the Director of OCCA. The emails submitted by the petitioners demonstrate a continuing attempt by OVR, at least as of June 2006, to negotiate with ISW and a desire that the Director of OCCA facilitate those discussions.

Petitioners' response to the show cause order affords no basis upon which to continue this proceeding. OVR filed a complaint, which the Board resolved in the February 23, 2005 decision. OVR later sought to augment its original complaint via a "supplemental" petition filed more than 80 days later, which Board staff has sought to mediate and, as the show cause order noted, continues to make itself available to mediate.¹ It is unclear from the docket whether there are any remaining issues to be resolved.

Petitioners failed to provide a specific and detailed statement regarding the nature of any outstanding issues, the relief sought and the basis for their claim(s). Instead, they focused on the commercial acceptability of ISW's rates,² and provided only a vague statement that the Board should "... provide OVR and ISW with an opportunity to update the record and then address service issues which have been presented to the Board by Petitioners." This response was not adequate under the circumstances of this case.

Moreover, the emails upon which petitioners rely were generated, not as part of this formal proceeding, but rather as part of informal negotiations in which the Director sought to facilitate an agreement among the parties. This sort of negotiation often provides an alternative to, and may obviate, pursuit of a formal complaint. The emails were not accompanied or followed by any pleading in the formal docket.

Nothing has prevented petitioners from updating the record or addressing service issues during calendar year 2006 or during the present year. The fact that they have not done so, combined with a response to the show cause order that sheds no further light on the issues they wish to put before the Board, suggests that this proceeding is not a vehicle by which petitioners are actively pursuing a specific service complaint cognizable under the statutory provisions cited in their supplemental petition. In short, OVR has failed to justify keeping a formal proceeding open.

¹ In a response filed June 21, 2005, ISW objected to the supplemental petition on the grounds that the proceeding had concluded and that the supplemental petition impermissibly sought to introduce new claims. ISW notes that Mid-America was not even a party to the original proceeding. Because OVR has failed to show cause why the proceeding should not be dismissed, the Board does not need to rule on that challenge.

² Petitioners complain that "... ISW continues to refuse to negotiate rates which will move traffic to and from the shipper served by OVR." The appearance that petitioners are concerned chiefly, if not exclusively, with rates, rather than service issues, is buttressed by a letter submitted as correspondence by Mid-America on March 12, 2007, which complains solely about the rates charged by ISW.

If OVR or Mid-America believes that ISW has committed a dereliction of service-related duty in violation of the statute, either (or both) can file a new complaint, stating with specificity the violation and the relief sought. Mid-America may file a complaint challenging the reasonableness of ISW's rates if it is dissatisfied and can show that the rates are subject to the Board's rate reasonableness jurisdiction. Petitioners may not convert this proceeding into a rate reasonableness case. See Union Pacific R.R. v. ICC, 867 F.2d 646, 649 (D.C. Cir. 1989).

This proceeding will be dismissed without prejudice to either or both petitioners filing a new complaint in a new docket.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is dismissed without prejudice.
2. This decision is effective on August 12, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary